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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,912	02/04/2004	Scott Douglas Wood	H680129.0001US0	3482
1200	7590	06/27/2006	EXAMINER	
AKIN, GUMP, STRAUSS, HAUER & FELD 1111 LOUISIANA STREET 44TH FLOOR HOUSTON, TX 77002			SMITH, PAUL B	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/771,912	Applicant(s) WOOD, SCOTT DOUGLAS	
	Examiner Paul B. Smith	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/4/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/4/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 2/4/2004 is acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner considers the references cited therein.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 4 and 9-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Quinn ('099).

4. Quinn discloses a feeding catheter (6) that comprises a first lumen (138), a second lumen (137), and a third lumen (143). Said first lumen terminates at the insertion end of the feeding catheter. Said second and third lumen terminates between the insertion and the external end. (See Figures 25-36) Quinn further discloses a radio opaque marker coupled to the catheter at the second lumen opening. (See Paragraph 79) A check valve is taught to be disposed at the external end of the third lumen. (See Paragraph 95) The catheter is adapted for insertion into the patient via an oral-nasal cavity as is illustrated in figure 25.

5. Thus it appears Quinn reasonably teaches every element of claims 1-2, 4 and 9-25.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn ('099) in view of Nelson ('530).

9. Quinn discloses a feeding catheter (6) that comprises a first lumen (138), a second lumen (137), and a third lumen (143). Said first lumen terminates at the insertion end of the feeding catheter. Said second and third lumen terminates between the insertion and the external end. (See Figures 25-36) Quinn further discloses a radio

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opaque marker coupled to the catheter at the second lumen opening. (See Paragraph 79) A check valve is taught to be disposed at the external end of the third lumen. (See Paragraph 95) The catheter is adapted for insertion into the patient via an oral-nasal cavity as is illustrated in figure 25.

10. Quinn fails to teach a first lumen, second lumen and third lumen coterminating at the insertion end of the catheter.

11. Nelson teaches a gastrointestinal tube comprising four lumens that coterminate at the insertion end of the tube. (See Figure 4 and 5)

12. It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the feeding catheter disclosed by Quinn with the teachings of Nelson to provide a tubular assembly comprising three lumens that coterminate at the insertion end.

13. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn ('099) in view of Russo ('014).

14. Quinn discloses a feeding catheter (6) that comprises a first lumen (138), a second lumen (137), and a third lumen (143). Said first lumen terminates at the insertion end of the feeding catheter. Said second and third lumen terminates between

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the insertion and the external end. (See Figures 25-36) Quinn further discloses a radio opaque marker coupled to the catheter at the second lumen opening. (See Paragraph 79) A check valve is taught to be disposed at the external end of the third lumen. (See Paragraph 95) The catheter is adapted for insertion into the patient via an oral-nasal cavity as is illustrated in figure 25.

15. Quinn fails to disclose a weighted cap member coupled to the insertion end of the catheter.

16. Russo teaches a weighted end cap (44) adapted to be inserted into a lumen at the insertion end of a gastrointestinal feeding tube. (See Figure 2)

17. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Quinn with the end cap teachings of Russo to provide a weighted end cap that is adapted to be inserted into the terminal ends of coterminating lumens located at the insertion end of the catheter assembly.

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. U.S. Patent 7,048,722 to Quinn
- b. U.S. Patent 5,571,093 to Cruz *et al.*


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19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul B. Smith whose telephone number is 571-272-6022. The examiner can normally be reached on 8 am - 4 pm.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul B Smith
Examiner
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Primary Patent Ex-
Du 3263

PBS
June 24, 2006

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